

**BEFORE THE ENVIRONMENTAL QUALITY COUNCIL** **F I L E D**  
**STATE OF WYOMING**

AUG 10 2007

In the Matter of the )  
Administrative Order on Consent )  
Issued to Frontier Refining, Inc., )  
A Delaware Corporation )

Docket No. 06-5400  
Terri A. Lorenzon, Director  
Environmental Quality Council

<b>REQUESTED SUBMITTAL ON JOINT MOTION TO APPROVE JOINT STIPULATION FOR MODIFICATION OF ADMINISTRATIVE ORDER ON CONSENT</b>
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COMES NOW, Arp & Hammond Hardware Company (“Arp & Hammond”), by and through its attorney Alvin Wiederspahn of Alvin Wiederspahn J.D., P.C., and in response to the request of the Wyoming Environmental Quality Council (“EQC”; the “Council”) submits the following:

I. PROCEDURAL POSTURE OF THE MATTER

1. On June 11, 2007, a motion hearing was held on Arp & Hammond’s Motion to Intervene in the above captioned case.

2. At the conclusion of the hearing, the Presiding Officer advised the parties, *inter alia*, that the Joint Motion to Approve Joint Stipulation for Modification of Administrative Order on Consent is taken under advisement and would appear on the agenda of the Council’s late summer meeting, which has now been set for August 29, 2007, at the Western Wyoming College Boardroom in Rock Springs, Wyoming.

3. The Presiding Officer further stated that (a) Arp & Hammond should have input into the Joint Stipulation; (b) the remediation of Porter Draw should proceed in a timely manner; and (c) the process should include concurrent input from Arp & Hammond, noting that the Department of Environmental Quality’s (“DEQ”) allowing Arp & Hammond opportunity to comment on remediation plans only after their

negotiation by DEQ and Frontier Refining (“Frontier”) was not efficient and only serves to unduly delay the process.

4. The Presiding Officer further directed the parties to submit to the Council at the August 29<sup>th</sup> meeting either a Joint Stipulation Modifying the Stipulation or individual updates explaining why the parties could not reach an agreement before the scheduled meeting.

## II. REQUESTED UPDATE FROM ARP & HAMMOND

Arp & Hammond wishes to advise the Council of those actions taken by the parties since the June 11, 2007 hearing. Both Frontier and Arp & Hammond have met (separately) with DEQ Director John Corra and, as a result, a conference has been set for August 23, 2007, among Mr. Corra, other DEQ personnel and representatives of Arp & Hammond and Frontier to discuss the current status of this matter. Director Corra has stated by letter dated July 11, 2007, that DEQ intends to uphold the terms of the Joint Stipulation and the Administrative Order on Consent (the “AOC”).

Pertinent events occurring around or since the June 11 hearing:

- Frontier, by filing dated April 27, 2007, submitted to DEQ’s Solid and Hazardous Waste Division (“DEQ/S&HWD”) its *Draft Remediation Work Plan for Porter Draw Reservoir* and, by filing dated May 11, 2007, submitted the *Addendum to the Remediation Work Plan for Porter Draw Reservoir Porter Draw Pipeline Assessment* (combined, the “Remediation Work Plan”).
- By letter dated May 23, 2007, Arp & Hammond provided DEQ with its comments on the proposed Remediation Work Plan.

- By letter dated June 25, 2007, DEQ/S&HWD provided Frontier with its comments on the Remediation Work Plan, requesting Frontier's response.
- Following a brief extension, Frontier submitted its responses to the DEQ comments by letter dated July 31, 2007.
- In turn, Arp & Hammond provided to DEQ its comments on Frontier's responses by letter dated August 9, 2007.

The status, then, of this matter is as follows:

- No agreement for a Joint Stipulation modifying the Stipulation has been achieved.
- Frontier's draft Remediation Work Plan is insufficient in that 1) it does not address the full scope of environmental damage Frontier has caused at Porter Draw; and 2) it does not set forth a timely, or effective, or efficient plan for the requisite cleanup. This is not, in Arp & Hammond's opinion, inadvertent.
- Frontier has not provided assurances that it is preparing or has prepared a Draft Final RCRA Facility Investigation report on all on-site and off-site areas setting forth efforts needed to clean up its pollution of Arp & Hammond land adjacent to its Refinery (the "Refinery Impacted Property"; the "R.I.P."). The Joint Stipulation requires that such a report, accompanied by a Corrective Action Plan, be filed with DEQ not later than October 15, 2007, with the expectation that remediation be completed by October 15, 2008.
- Frontier has stipulated that it was in "settlement negotiations" with DEQ in September of 2006 to create satisfactory boundary control halting releases



of contaminants from the Frontier Refinery onto the R.I.P. However, Frontier, to Arp & Hammond's knowledge, has produced no plan for boundary control and has taken no action to stop further releases.

For many years Frontier has employed a (successful) strategy of *delay* to defer at least, and avoid altogether if possible, its environmental cleanup responsibility. In the over fifteen year history of this enforcement action, the single event that moved Frontier to take action was the August 15, 2006, letter from the Environmental Protection Agency ("EPA") to DEQ that resulted in negotiation of the Joint Stipulation. The most recent, but only the most recent, example of Frontier's strategy of delay is contained in its responses to DEQ's comments on the draft Remediation Work Plan. Frontier proposes a scientifically unsound, and illogical, scheme to defer the investigation of groundwater at the site until soil and sediment remediation is completed. Such a scheme would extend the cleanup of Porter Draw for at least two, and perhaps as many as four, years. This strategy has obvious benefits for the polluter: 1) it delays the expenditure of cleanup funds (any expense delayed is an expense diminished); and 2) it allows for some attenuation to occur, likely reducing the eventual cost of cleanup. The strategy of delay has been effective; by burying regulatory agencies with minutiae and doing the barest minimum to simulate compliance, sight is lost of the fact that Frontier is making no progress and the land and water are not being cleaned up. One only need consider the obvious fact that the AOC has lingered for fifteen years, evincing the least possible activity, until, at long last, an EPA directive compelled creation of the timetables for action set forth in the Joint Stipulation.

Frontier's strategy, while serving the polluter's ends, does not serve the land, the water, the State of Wyoming or the private property owner well. Their property (the waters of the State and the private land within its boundaries) remain contaminated, devalued and, at a minimum, continuing to pose the risk of a hazard to plant, animal and human health.

### III. SUMMARY

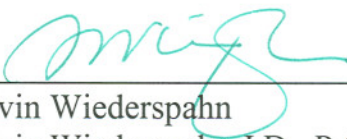
The foregoing are the reasons why Arp & Hammond has been unable to agree with Frontier on the basis for a Joint Stipulation modifying the Stipulation. Arp & Hammond is the party whose property has been polluted by Frontier, yet Frontier refuses to acknowledge that Arp & Hammond should be a party to this Docket. Frontier, rather than act expeditiously, continues to employ delays and smokescreens that have served it so well in avoiding the responsibility to clean up its mess.

In the February 12, 2007 Motion of Arp & Hammond Hardware Company for Leave to Intervene and to Supplement *Joint Stipulation for Modification of Administrative Order on Consent*, Arp & Hammond requested that the Stipulation be approved and further requested that the Stipulation be supplemented by the addition of thirteen specific items in order to assure that the Porter Draw wastewater reservoir and conveyance pipeline would be adequately investigated and remediated. Arp & Hammond reiterates its request that the Stipulation be approved as supplemented so that investigation and remediation required by the original AOC can proceed with enforceable due dates and that investigation and remediation of Porter Draw, the conveyance pipeline and the R.I.P. can move forward in a prompt and comprehensive manner.

Respectfully submitted this 10<sup>th</sup> day of August, 2007.

ARP & HAMMOND HARDWARE COMPANY

By:

  
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## CERTIFICATE OF SERVICE

I hereby certify that on this 10<sup>th</sup> day of August, 2007, a true and correct copy of the foregoing document was served by first-class mail, postage prepaid, addressed to:

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